In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 99

MATTIE MCELROY, NEE HARJO, PETITIONER

v.

W. M. PEGG, ET AL., AND UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

The United States was a party to this case in the trial court but did not join in the appeal (R. 344). This memorandum is filed for the purpose of stating the Government's position in the case.

Petitioner is the daughter of Lucy Harjo, a full-blood Chickasaw Indian, and was the devisee of her residuary estate. Lucy Harjo acquired the land in dispute in 1919, the land having been purchased with her restricted funds and the title having been transferred under a restricted form of deed. In

1932 Lucy Harjo executed a deed purporting to convey the land to W. M. Pegg, through whom the other respondents claim title. Petitioner instituted this suit in the United States District Court for the Eastern District of Oklahoma on October 8, 1946, claiming that, for various reasons, the deed of 1932 was invalid and that petitioner became the owner of the land after the death of Lucy Harjo in 1938 (R. 1-12).

The petitioner caused notice of pendency of the action to be served upon the Superintendent of the Five Civilized Tribes on October 8, 1946, pursuant to section 3 of the Act of April 12, 1926, c. 116, 44 Stat. 239 (R. 14). The United States filed a complaint in intervention adopting certain allegations of the complaint and demanding "for itself and for all restricted Indians whose restricted land is involved herein" that the deed of 1932 and conveyances emanating therefrom be cancelled (R. 24-25). At the trial the United States did not produce any evidence and took a neutral position on the question whether the deed of 1932 was valid. The Government took the position, however, that if petitioner should be held to be the owner of the land, it should be held to be restricted. The trial court held that petitioner was not the owner of the land; hence, it did not pass upon this latter question.

Maintaining its neutral position, the United States did not appeal from the judgment and did

not participate in the proceedings in the court below (R. 341, 349). The Government desires to continue to maintain that neutral position in this Court.

Respectfully submitted,

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JULY, 1948

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